


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Julia D'Alesandro, Audit Dept.
From:  Brent Johnson, General Counsel
Re: Court-Ordered Restitution Suspended for Jail Time Served
Date: February 13, 2006

This memorandum is in response to your e-mail dated January 31, 2006, asking whether a judge could suspend court-ordered restitution for jail time served. I have done some research on this question and that I believe a judge would have authority to suspend the court-ordered portion of restitution.

Utah cases have not directly addressed this issue. However, reviewing a few cases from other states indicates that judges have authority to suspend any portion of a sentence, particularly if a statute provides such authority to suspend. Utah Code Ann. § 77-18-1(2) gives judges authority to suspend any portion of a sentence. When a judge makes a restitution order, a judge enters both complete restitution and court-ordered restitution. The complete restitution is the amount necessary to make a victim complete whole. The court-ordered restitution is the amount that a defendant pays as a part of the sentence or as a condition of probation. A judge would not have authority to suspend the complete restitution. However, because the judge retains authority over the execution of the sentence and probation, a judge could suspend court-ordered probation based on time served. I agree with your assessment that, in that situation, the court should notify the victim that the court-ordered restitution has been suspended, but the victim can continue to collect the complete restitution.

If you have any questions about this, please let me know.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.